



GENERAL ASSEMBLY COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

HOUSE BILL NO. 241

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The following bill was reported to the Senate from the House and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to captive insurers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 ➔Section 1. KRS 304.49-010 is amended to read as follows:

2 As used in KRS 304.49-010 to 304.49-230, unless the context requires otherwise:

3 (1) "Affiliated company" means any company in the same corporate system as a parent,
4 an industrial insured, or a member organization by virtue of common ownership,
5 control, operation, or management.

6 (2) "Agency captive insurer" means a captive insurer that is owned by one (1) or more
7 business entities that are licensed insurance producers and that only insure risks on
8 policies placed through their owners.

9 (3) "Captive insurer" means any pure captive insurer, consortium captive insurer,
10 sponsored captive insurer, special purpose captive insurer, agency captive insurer,
11 or industrial insured captive insurer formed or issued a certificate of authority under
12 the provisions of KRS 304.49-010 to 304.49-230. For purposes of KRS 304.49-010
13 to 304.49-230, a branch captive insurer shall be a pure captive insurer with respect
14 to operations in Kentucky, unless otherwise permitted by the executive director.

15 (4) "Consortium" means any bona fide legal association of individuals, corporations,
16 limited liability companies, partnerships, ~~or~~ associations, or other entities ~~that~~,
17 ~~has been in continuous existence for at least one (1) year~~, the member
18 organizations of which collectively, or which does itself:

19 (a) Own, control, or hold with power to vote all of the outstanding voting
20 securities or member interests of a consortium captive insurer incorporated as
21 a stock insurer; or

22 (b) Have complete voting control over a consortium captive insurer
23 organized ~~incorporated~~ as a mutual insurer; or

24 (c) The member organizations of which collectively constitute all of the
25 subscribers of a consortium captive insurer formed as a reciprocal insurer.

- 1 (5) "Consortium captive insurer" means any company that insures risks of the member
 2 organizations of the consortium and that also may insure the risks of affiliated
 3 companies of the member organizations and the risks associated with the
 4 consortium itself~~[their affiliated companies]~~.
- 5 (6) "Excess workers' compensation insurance" means, in the case of an employer that
 6 has insured or self-insured its workers' compensation risks in accordance with
 7 applicable state or federal law, insurance in excess of a specified per incident or
 8 aggregate limit established by the executive director.
- 9 (7) "Industrial insured" means an insured as defined in KRS 304.11-020(2)~~[304.11-~~
 10 ~~020(1)]~~.
- 11 (8) "Industrial insured captive insurer" means any company that insures risks of the
 12 industrial insureds that comprise the industrial insured group, and their affiliated
 13 companies.
- 14 (9) "Industrial insured group" means any group that meets either of the following
 15 criteria:
- 16 (a) Any group of industrial insureds that collectively:
- 17 1. Own, control, or hold with power to vote all of the outstanding voting
 18 securities of an industrial insured captive insurer incorporated as a stock
 19 insurer;
- 20 2. Have complete voting control over an industrial insured captive insurer
 21 incorporated as a mutual insurer; or
- 22 3. Constitute all of the subscribers of an industrial insured captive insurer
 23 formed as a reciprocal insurer; or
- 24 (b) Any group which is created under the Product Liability Risk Retention Act of
 25 1981, 15 U.S.C. secs. 3901 et seq., as amended, as a corporation or other
 26 limited liability association.
- 27 (10) "Member organization" means any individual, corporation, partnership,~~[—or]~~

- 1 association, or other entity that belongs to a consortium.
- 2 (11) "Parent" means a corporation, partnership, ~~[or]~~ individual, or other entity that
 3 directly or indirectly owns, controls, or holds with power to vote more than fifty
 4 percent (50%) of the outstanding voting securities of a pure captive insurer.
- 5 (12) "Pure captive insurer" means any company that insures risks of its parent and
 6 affiliated companies or controlled unaffiliated business.
- 7 (13) "Controlled unaffiliated business" means any person~~[company]~~:
- 8 (a) That is not in the corporate system of a parent and its affiliated companies in
 9 the case of a pure captive, or that is not in the corporate system or an
 10 industrial insured and its affiliated companies in the case of an industrial
 11 insured captive insurance company;
- 12 (b) That has an existing contractual relationship with a parent or affiliated
 13 companies in the case of a pure captive, or with an industrial insured or one
 14 (1) of its affiliated companies in the case of an industrial insured captive
 15 insurance company; and
- 16 (c) Whose risk management function related to the covered risk of loss is
 17 controlled by an affiliate of~~[risks are managed by]~~ a pure captive insurer or
 18 an industrial insured captive insurance company, as applicable, providing
 19 coverage or reinsurance~~[in accordance with KRS 304.49-170]~~.
- 20 (14) "Foreign captive insurer" means any insurer formed to write insurance business for
 21 its parents and affiliates and licensed pursuant to the laws of any state other than
 22 Kentucky which imposes statutory or regulatory standards in a form acceptable to
 23 the executive director on companies transacting the business of insurance in that
 24 jurisdiction. Under KRS 304.49-010 to 304.49-230, captive insurers formed under
 25 the laws of any jurisdiction other than a state of the United States shall be treated as
 26 a foreign captive insurer unless the context requires otherwise.
- 27 (15) "Branch business" means any insurance business transacted by a branch captive

- 1 insurer in Kentucky.
- 2 (16) "Branch captive insurer" means any foreign captive insurer issued a certificate of
3 authority by the executive director to transact the business of insurance in Kentucky
4 through a business unit with a principal place of business in Kentucky.
- 5 (17) "Branch operations" means any business operations of a branch captive insurer in
6 Kentucky.
- 7 (18) "Participant" means an entity as defined in KRS 304.49-210, and any affiliates
8 thereof, that are insured by a sponsored captive insurer, where the losses of the
9 participant are limited through a participant contract to the assets of a protected cell.
- 10 (19) "Participant contract" means a contract by which a sponsored captive insurer insures
11 the risks of a participant and limits the losses of the participant to the assets of a
12 protected cell.
- 13 (20) "Protected cell" means a separate account established and maintained by a
14 sponsored captive insurer for one (1) participant.
- 15 (21) "Reciprocal insurer" means an insurer engaging in reciprocal insurance as defined
16 by KRS 304.27-010.
- 17 (22) "Special purpose captive insurer" means any person that is licensed under this
18 chapter and designated as a special purpose captive insurer by the executive
19 director. A person may be designated as a special purpose captive insurer if it is
20 established for one (1) specific purpose or transaction, and where it is desirable to
21 isolate the purpose or transaction from the other activities of a party or parties
22 involved in the transaction, or where the transaction dictates that the vehicle should
23 not be treated as controlled or owned by any other party to that transaction.
- 24 (23) "Sponsor" means any entity that meets the requirements of KRS 304.49-200 and is
25 approved by the executive director to provide all or part of the capital and surplus
26 required by applicable law and to organize and operate a sponsored captive insurer.
- 27 (24) "Sponsored captive insurer" means any captive insurer:

- 1 (a) In which the minimum capital and surplus required by applicable law is
 2 provided by one (1) or more sponsors;
- 3 (b) That is formed or issued a certificate of authority under the provisions of this
 4 subtitle;
- 5 (c) That insures the risks of separate participants through contract; and
- 6 (d) That segregates each participant's liability through one (1) or more protected
 7 cells.

8 ➔Section 2. KRS 304.49-040 is amended to read as follows:

9 (1) No captive insurer shall be issued a certificate of authority unless it shall possess
 10 and thereafter maintain unimpaired paid-in capital and surplus of:

11 (a) In the case of a pure captive insurer, not less than two hundred fifty thousand
 12 dollars (\$250,000);

13 ~~(b) [In the case of an consortium captive insurer, not less than seven hundred fifty~~
 14 ~~thousand dollars (\$750,000);~~

15 ~~(c)~~—]In the case of a consortium, sponsored, agency or an industrial insured
 16 captive insurer, not less than five hundred thousand dollars (\$500,000);

17 ~~[(d) In the case of a sponsored captive insurer, not less than one million dollars~~
 18 ~~(\$1,000,000);~~

19 ~~(e) In the case of an agency captive insurer, not less than five hundred thousand~~
 20 ~~dollars (\$500,000);] and~~

21 ~~(c)~~~~[(f)]~~ In the case of a special purpose captive insurer, not less than two
 22 hundred fifty thousand dollars (\$250,000), or another amount determined by
 23 the executive director.

24 (2) Notwithstanding the requirements of subsection (1) of this section, no captive
 25 insurer organized as a reciprocal insurer under KRS 304.49-010 to 304.49-230 shall
 26 be issued a certificate of authority unless it shall possess and thereafter maintain
 27 free surplus of not less than five hundred thousand dollars (\$500,000)~~[one million~~

1 dollars (\$1,000,000)].

- 2 (3) The executive director may prescribe additional capital and surplus based upon the
3 type, volume, and nature of insurance business transacted.
- 4 (4) Capital and surplus ~~shall~~~~may~~ be in the form of cash, ~~or~~ an irrevocable letter of
5 credit issued by a bank approved by the executive director and chartered by the
6 Commonwealth of Kentucky or a member bank of the Federal Reserve System, a
7 surplus note approved by the executive director, or other assets as may be
8 approved by the executive director. A surplus note shall not be used for the initial
9 minimum capital and surplus of a non-mutual captive insurer.
- 10 (5) In the case of a branch captive insurer, as security for the payment of liabilities
11 attributable to the branch operations, the executive director shall require that a
12 separate trust fund, funded by an irrevocable letter of credit or other acceptable
13 asset, be established and maintained in the United States for the benefit of United
14 States policyholders and United States ceding insurers under insurance policies
15 issued or reinsurance contracts issued or assumed, by the branch captive insurer
16 through its branch operations. The amount of this security may be no less than the
17 capital and surplus required in this section and the reserves on the insurance policies
18 or the reinsurance contracts, including reserves for losses, allocated loss adjustment
19 expenses, incurred but not reported losses, and unearned premiums with regard to
20 business written through the branch operations; provided, however, the executive
21 director may permit a branch captive insurer that is required to post security for loss
22 reserves on branch business by its reinsurer to reduce the funds in the trust account
23 required by this section by the same amount so long as the security remains posted
24 with the reinsurer. If the form of security selected is a letter of credit, the letter of
25 credit must be established by, or issued or confirmed by, a bank chartered in
26 Kentucky or a member bank of the Federal Reserve System.

27 ➔Section 3. KRS 304.49-050 is amended to read as follows:

1 No captive insurer may pay a dividend out of, or other distribution with respect to, capital
 2 or surplus, in excess of the limitations set forth in KRS 304.24-320 and 304.24-330
 3 without the prior approval of the executive director. Approval of an ongoing plan for the
 4 payment of dividends or other distributions shall be conditioned upon the retention, at the
 5 time of each payment, of capital or surplus in excess of amounts specified by, or
 6 determined in accordance with formulas approved by, the executive director. The
 7 executive director may rescind approval of all or part of the dividend and may require
 8 repayment of all or part of the dividend amount if a dividend is paid without approval,
 9 made in excess of the approved amount, made in excess of the approved amount, or
 10 made in violation of the terms of the approval.

11 → Section 4. KRS 304.49-060 is amended to read as follows:

12 (1) A ~~pure~~ captive insurer ~~or a sponsored captive insurer~~ shall be
 13 formed~~incorporated~~ as a:

14 (a) Stock insurer with its capital divided into shares and held by the stockholders;

15 ~~[(2) A consortium captive insurer or an industrial insured captive insurer may be:~~

16 ~~(a) Incorporated as a stock insurer with its capital divided into shares and held by~~
 17 ~~the stockholders; or]~~

18 (b) ~~[Incorporated as a]~~Mutual insurer without capital stock in accordance with
 19 Subtitle 24 of this chapter~~], the governing body of which is elected by the~~
 20 ~~member organizations of its consortium];~~

21 (c) ~~[Organized as a]~~Reciprocal insurer in accordance with Subtitle 27 of this
 22 chapter;~~[-]~~

23 ~~(3) A special purpose captive insurer may be:~~

24 ~~(a) Incorporated as a stock corporation;~~

25 ~~(b) Incorporated as a nonstock corporation;]~~

26 ~~(d)~~~~(e)~~ Formed as a]Limited liability company pursuant to KRS Chapter 275;

27 (e) Business corporation pursuant to KRS Chapter 271B;

- 1 (f) Non-stock, non-profit corporation pursuant to KRS Chapter 273; or
 2 (g) Partnership, limited partnership, statutory business trust, or other legal
 3 person or entity other than a natural person in his or her individual
 4 capacity, with the approval of the executive director upon a showing of
 5 demonstrated need.

- 6 ~~[(d) Formed as a partnership;~~
 7 ~~(e) Formed as a limited partnership;~~
 8 ~~(f) Formed as a statutory trust; or~~
 9 ~~(g) Such other person approved by the executive director, other than a natural~~
 10 ~~person in his or her individual capacity.~~

11 ~~(4) A sponsored captive insurer may be:~~

- 12 ~~(a) Incorporated as a stock corporation;~~
 13 ~~(b) Incorporated as a nonstock corporation;~~
 14 ~~(c) Formed as a limited liability company;~~
 15 ~~(d) Formed as a partnership;~~
 16 ~~(e) Formed as a limited partnership; or~~
 17 ~~(f) Formed as a statutory trust.]~~

18 (2) A captive insurer formed as a corporation, limited liability company or nonstock,
 19 nonprofit corporation shall have the privileges and be subject to the provisions of
 20 KRS Chapter 271B, 273, or 275 and the provisions of this subtitle. If there is a
 21 conflict between the provisions of KRS Chapter 271B, 273, or 275 and the
 22 provisions of this subtitle, the provisions of this subtitle shall control.

23 (3) A captive insurer organized as a corporation may issue classes of shares and
 24 series of shares within a class pursuant to KRS Chapter 271B.

25 (4) Captive insurance companies formed as corporations under the provisions of this
 26 subtitle shall have the privileges and be subject to the provisions of KRS Chapter
 27 271B and the applicable provisions contained in this subtitle. The provisions of

1 this chapter shall control if there is a conflict between the provisions of KRS
 2 Chapter 271B and the provisions of this chapter. The provisions of this chapter,
 3 pertaining to mergers, consolidations, conversions, mutualizations, and
 4 redomestications, shall apply in determining the procedures to be followed by
 5 captive insurance companies in carrying out any of the transactions described in
 6 Subtitles 24 and 37 of this chapter, except that:

7 (a) The executive director may, upon request of an insurer party to a merger
 8 authorized under this subsection, waive the requirement of KRS 304.24-
 9 390(4); and

10 (b) The executive director may waive or modify the requirements for public
 11 notice and hearing in accordance with administrative regulations which
 12 may be promulgated by the executive director addressing categories of
 13 transactions. If a notice of public hearing is required, but no one requests a
 14 hearing, the executive director may cancel the hearing.

15 (5) A risk retention group may take any form permitted under the Liability Risk
 16 Retention Act of 1986, 15 U.S.C. sec. 3901 et seq., as amended.

17 (6) A captive insurer incorporated or organized in Kentucky shall have at least one (1)
 18 incorporator or organizer~~[not less than three (3) incorporators or two (2)~~
 19 ~~organizers].~~

20 (7) In the case of a captive insurer, the executive director shall find, in order to issue a
 21 certificate of authority, that the establishment and maintenance of the proposed
 22 captive insurer will promote the general good of the state. In arriving at such a
 23 finding, the executive director shall consider:

24 (a) The character, reputation, financial standing, and purposes of the
 25 incorporators or organizers;

26 (b) The character, reputation, financial responsibility, insurance experience, and
 27 business qualifications of the persons responsible for the conduct of the

1 captive insurer's affairs; and

2 (c) Any other aspects the executive director deems advisable.

3 (8) The capital stock of a captive insurer incorporated as a stock insurer may be
4 authorized with no par value.

5 ~~(9) Captive insurance companies formed as corporations under the provisions of KRS~~
6 ~~304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions~~
7 ~~of KRS Chapter 271B as well as the applicable provisions contained in KRS~~
8 ~~304.49-010 to 304.49-230. If there is a conflict between the provisions of KRS~~
9 ~~Chapter 271B and the provisions of this chapter, the latter shall control. The~~
10 ~~provisions of this chapter, pertaining to mergers, consolidations, conversions,~~
11 ~~mutualizations, and redemptions, shall apply in determining the procedures to~~
12 ~~be followed by captive insurance companies in carrying out any of the transactions~~
13 ~~described therein, except that:~~

14 ~~(a) The executive director may, upon request of an insurer party to a merger~~
15 ~~authorized under this subsection, waive the requirement of KRS 304.24-~~
16 ~~390(4); and~~

17 ~~(b) The executive director may waive or modify the requirements for public~~
18 ~~notice and hearing in accordance with rules which the executive director may~~
19 ~~adopt addressing categories of transactions. If a notice of public hearing is~~
20 ~~required, but no one requests a hearing, then the executive director may cancel~~
21 ~~the hearing.~~

22 (10) Captive insurance companies formed as reciprocal insurers under the provisions of
23 KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the
24 provisions of Subtitle 27 of this chapter in addition to the applicable provisions of
25 this subtitle. In the event of a conflict between the provisions of Subtitle 27 of this
26 chapter and the provisions of this subtitle, the latter shall control. To the extent a
27 reciprocal insurer is made subject to other provisions of this subtitle pursuant to

1 Subtitle 27 of this chapter, those provisions shall not be applicable to a reciprocal
 2 insurer formed under KRS 304.49-010 to 304.49-230 unless the provisions are
 3 expressly made applicable to captive insurance companies under KRS 304.49-010
 4 to 304.49-230.

5 ~~(10)~~~~(11)~~ In addition to the provisions of subsection ~~9~~~~(10)~~ of this section, captive
 6 insurance companies organized as reciprocal insurers that are industrial insured
 7 groups as defined in this subtitle shall have the privileges and be subject to the
 8 provisions of Subtitle 45 of this chapter, in addition to the applicable provisions of
 9 this subtitle.

10 ~~(11)~~~~(12)~~ The articles of incorporation or bylaws of a captive insurer formed as a
 11 corporation may authorize a quorum of a board of directors to consist of no fewer
 12 than one-third (1/3) of the fixed or prescribed number of directors.

13 ~~(12)~~~~(13)~~ The subscribers' agreement or other organizing document of a captive insurer
 14 formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory
 15 committee to consist of no fewer than one-third (1/3) of the number of its members.

16 ~~(13)~~~~(14)~~ Each owner of an agency captive insurer shall be licensed as an insurance
 17 producer.

18 **(14) The parent of a pure captive insurer may include an employee benefit plan,**
 19 **employee stock ownership plan, or any legal or business trust approved by the**
 20 **executive director.**

21 →Section 5. KRS 304.49-070 is amended to read as follows:

22 (1) Captive insurance companies shall not be required to make any annual report except
 23 as provided in KRS 304.49-010 to 304.49-230.

24 (2) On or before March 1 of each year, each captive insurer shall submit to the
 25 executive director a report of its financial condition, verified by oath of two (2) of
 26 its executive officers. Each captive insurer shall report using generally accepted
 27 accounting principles, unless the executive director approves the use of statutory

1 accounting principles or international accounting standards. The approved
 2 accounting method may contain~~[, with]~~ any appropriate or necessary modifications
 3 or adaptations thereof required or approved or accepted by the executive director for
 4 the type of insurance and kinds of insurers to be reported upon, and as
 5 supplemented by additional information required by the executive director. Any
 6 captive insurer whose use of statutory accounting principles is approved by the
 7 executive director may make modifications and adaptations as are necessary to
 8 record as admitted the full value of all investments by the captive insurer permitted
 9 under this subtitle and, subject to the executive director's approval, to make its
 10 reports under this section consistent with the purposes of this subtitle. Except as
 11 otherwise provided, all captive insurers, with the exception of those formed as a risk
 12 retention group, shall file reports on a form prescribed by the executive director~~[~~
 13 ~~through administrative regulation]~~. The provisions of KRS 304.3-242(4)(a) and (d)
 14 shall not apply to a captive insurer. A captive insurer formed as a risk retention
 15 group shall file reports pursuant to KRS 304.2-205, with additional information or
 16 modification as the executive director may prescribe. The executive director shall
 17 by administrative regulation propose the forms in which captive insurers shall
 18 report.

19 (3) Any~~[pure]~~ captive insurer~~[or an industrial insured captive insurer insuring the risks~~
 20 ~~of industrial insured groups as defined in KRS 304.49-010(9)(a)]~~ may make written
 21 application for filing the required report on a fiscal year end. If an alternative
 22 reporting date is granted, the annual report is due sixty (60) days after the fiscal year
 23 end.

24 (4) Sixty (60) days after the fiscal year end, a branch captive insurer shall file with the
 25 executive director a copy of all reports and statements required to be filed under the
 26 laws of the jurisdiction in which the foreign captive insurer is formed, verified by
 27 oath of two (2) of its executive officers. If the executive director is satisfied that the

1 annual report filed by the foreign captive insurer in its domiciliary jurisdiction
 2 provides adequate information concerning the financial condition of the foreign
 3 captive insurer, the executive director may waive the requirement for completion of
 4 the captive annual statement for business written in the foreign jurisdiction.

5 ➔ Section 6. KRS 304.49-100 is amended to read as follows:

6 (1) *A captive insurer shall establish, monitor, and control its investment strategy*
 7 *prudently, setting clear guidelines with regard to the exposure to different*
 8 *investment types, levels of investment grade, and exposure to individual*
 9 *investments. This investment plan and any material amendments shall be filed*
 10 *with the executive director.*

11 (2) *A captive insurer shall not be subject to any restrictions on allowable investments*
 12 *in this chapter, including those limitations contained in Subtitle 7 of this chapter.*

13 (3) *The executive director may prohibit or limit any investment that threatens the*
 14 *solvency or liquidity of any company.*

15 (4) ~~{A consortium captive insurer, sponsored captive insurer, and }~~An industrial insured
 16 captive insurer insuring the risks of an industrial insured group defined in KRS
 17 304.49-010(9)(b) shall comply with the investment requirements contained in
 18 Subtitle 7 of this chapter. Notwithstanding any other provision of this chapter, the
 19 executive director may approve the use of alternative reliable methods of valuation
 20 and rating.

21 ~~{(2) No pure captive insurer or industrial insured captive insurer insuring the risks of an~~
 22 ~~industrial insured group as defined in KRS 304.49-010(8)(a) shall be subject to any~~
 23 ~~restrictions on allowable investments whatever, including those limitations~~
 24 ~~contained in Subtitle 7 of this chapter; provided, however, that the executive~~
 25 ~~director may prohibit or limit any investment that threatens the solvency or liquidity~~
 26 ~~of any such company.~~

27 (3) ~~Only a pure captive insurer may make loans to its parent company or affiliates. No~~

1 ~~loans to a parent company or any affiliate shall be permitted without prior written~~
 2 ~~approval of the executive director and shall be evidenced by a note in a form~~
 3 ~~approved by the executive director.~~

4 ~~(4) All captive insurers are subject to KRS 304.37-030 regarding material transactions.]~~

5 ➔Section 7. KRS 304.49-110 is amended to read as follows:

6 (1) Any captive insurer may provide reinsurance, as provided in KRS 304.5-130, 304.5-
 7 140, and 304.5-150, on risks ceded by any other insurer.

8 (2) **A captive insurer may provide reinsurance on risks ceded by any other insurer or**
 9 **captive insurer.**

10 (3) (a) Any captive insurer may take credit for reserves on risks or portions of risks
 11 ceded to reinsurers complying with the provisions of KRS 304.5-140.

12 (b) A captive insurer shall not take credit for reserves on risks or portions of risks
 13 ceded to a reinsurer if the reinsurer is not in compliance with KRS 304.5-140.

14 (c) **Prior approval of the executive director shall be required for ceding or**
 15 **taking credit for the reinsurance of risks or portions of risks ceded to**
 16 **reinsurers not complying with KRS 304.5-130, 304.5-140, and 304.5-150.**

17 ~~(4)(3)~~ For all purposes of KRS 304.49-010 to 304.49-230, insurance by a captive
 18 insurer of any workers' compensation qualified self-insured plan of its parent and
 19 affiliates shall be deemed to be reinsurance.

20 (5) **A captive insurer may take credit for the reinsurance of risks or portions of risks**
 21 **ceded to a pool, exchange, or association acting as an insurer or a reinsurer**
 22 **which has been authorized by the executive director. The executive director may**
 23 **require any other documents, financial information, or other evidence that the**
 24 **pool, exchange, or association will be able to provide adequate security for its**
 25 **financial obligations. The executive director may deny authorization or impose**
 26 **any limitations on the activities of a reinsurance pool, exchange, or association**
 27 **that in the executive director's judgment are necessary and proper to provide**

1 adequate security for the ceding captive insurer or segregated account and for the
 2 protection and consequent benefit of the public at large.

3 (6) The executive director may impose any other requirements that he or she deems
 4 necessary before permitting credit for reinsurance under this section, including
 5 but not limited to requiring an approved funds-held agreement, letter of credit,
 6 trust or other acceptable collateral based on unearned premium, loss and loss
 7 adjustment expense reserves, and incurred but not reported reserves.

8 →Section 8. KRS 304.49-130 is amended to read as follows:

9 (1) No captive insurer, including a captive insurer organized as a reciprocal insurer
 10 under KRS 304.49-010 to 304.49-230, shall be permitted to join or contribute
 11 financially to any plan, pool, association, or guaranty or insolvency fund in
 12 Kentucky, nor shall any such captive insurer, or its insured, or its parent or any
 13 affiliated company, or any member organization of its consortium, or in the case of
 14 a captive insurer organized as a reciprocal insurer, any subscriber thereof, receive
 15 any benefit from any such plan, pool, association, or guaranty or insolvency fund for
 16 claims arising out of the operations of such captive insurer.

17 (2) Subsection (1) of this section shall not prohibit captive insurers from entering
 18 into reinsurance or pooling transactions in the normal course of business, in
 19 accordance with Section 8 of this Act.

20 →Section 9. KRS 304.49-170 is amended to read as follows:

21 The executive director ~~may~~~~shall~~ promulgate administrative regulations establishing
 22 standards to ensure that a parent or affiliated company is able to exercise control of the
 23 risk management function of any controlled unaffiliated business to be insured by the
 24 pure captive insurer. The executive director may approve the coverage of such risks by a
 25 pure captive insurance company.

26 →Section 10. KRS 304.49-180 is amended to read as follows:

27 (1) A consortium captive insurer or industrial insured group formed as a stock or

1 mutual corporation or other legal or statutory entity may be converted to or merged
2 with and into a reciprocal insurer in accordance with a plan therefor and the
3 provisions of this section.

4 (2) Any plan for such conversion or merger shall be fair and equitable to the
5 shareholders, in the case of a stock insurer, or the policyholders, in the case of a
6 mutual insurer.

7 (3) In the case of a conversion authorized under subsection (1) of this section:

8 (a) The conversion shall be accomplished under any reasonable plan and
9 procedure approved by the executive director, but the executive director shall
10 not approve any plan of conversion unless the plan:

- 11 1. Satisfies the provisions of subsection (2) of this section;
- 12 2. Provides for a hearing, of which notice has been given to the insurer, its
13 directors, officers, and stockholders, in the case of a stock insurer, or
14 policyholders, in the case of a mutual insurer, all of whom shall have the
15 right to appear at the hearing, except that the executive director may
16 waive or modify the requirements for the hearing, provided that if a
17 notice of hearing is required, but no hearing is requested, the executive
18 director may cancel the hearing;
- 19 3. Provides for the conversion of existing stockholder or policyholder
20 interests into subscriber interests in the resulting reciprocal insurer,
21 proportionate to stockholder or policyholder interests in the stock or
22 mutual insurer; and
- 23 4. Is approved:
 - 24 a. In the case of a stock insurer, by a majority of the shares entitled to
25 vote represented in person or by proxy at a duly called regular or
26 special meeting at which a quorum is present;
 - 27 b. In the case of a mutual insurer, by a majority of the voting interests

- 1 of policyholders represented in person or by proxy at a duly called
 2 regular or special meeting at which a quorum is present;
- 3 (b) The executive director shall approve the plan of conversion if the executive
 4 director finds that the conversion will promote the general good of the state in
 5 conformity with those standards set forth in KRS 304.49-060(7);
- 6 (c) If the executive director approves the plan, the executive director shall amend
 7 the converting insurer's certificate of authority to reflect conversion to a
 8 reciprocal insurer and issue an amended certificate of authority to the
 9 company's attorney-in-fact;
- 10 (d) Upon the issuance of an amended certificate of authority of a reciprocal
 11 insurer by the executive director, the conversion shall be effective; and
- 12 (e) Upon the effectiveness of the conversion, the corporate existence of the
 13 converting insurer shall cease and the resulting reciprocal insurer shall notify
 14 the Secretary of State of the conversion.
- 15 (4) A merger authorized under subsection (1) of this section shall be accomplished
 16 substantially in accordance with the procedures set forth in KRS 304.24-390, except
 17 that, solely for purposes of the merger:
- 18 (a) The plan of merger shall satisfy the provisions of subsection (2) of this
 19 section;
- 20 (b) The subscribers' advisory committee of a reciprocal insurer shall be equivalent
 21 to the board of directors of a stock or mutual insurer;
- 22 (c) The subscribers of a reciprocal insurer shall be the equivalent of the
 23 policyholders of a mutual insurer;
- 24 (d) If a subscribers' advisory committee does not have a president or secretary, the
 25 officers of the committee having substantially equivalent duties shall be
 26 deemed the president or secretary of the committee;
- 27 (e) The executive director may, upon request of an insurer party to a merger

1 authorized under subsection (1) of this section, waive the requirement of KRS
2 304.24-390(4);

3 (f) The executive director shall approve the articles of merger if the executive
4 director finds that the merger will promote the general good of the state in
5 conformity with those standards set forth in KRS 304.49-060(7). If the
6 executive director approves the articles of merger, the executive director shall
7 indorse his or her approval thereon and the surviving insurer shall present and
8 file them with the Secretary of State;

9 (g) Notwithstanding KRS 304.49-040, the executive director may permit the
10 formation, without surplus, of a captive insurer organized as a reciprocal
11 insurer, into which an existing captive insurer may be merged for the purpose
12 of facilitating a transaction under this section; however, there shall be no more
13 than one (1) authorized insurer surviving the merger; and

14 (h) An alien insurer may be a party to a merger authorized under subsection (1) of
15 this section, provided that the requirements for a merger between a domestic
16 and a foreign insurer under KRS 304.24-390 shall apply to a merger between a
17 domestic and an alien insurer under this subsection. The alien insurer shall be
18 treated as a foreign insurer under KRS 304.24-390 and the other jurisdictions
19 shall be the equivalent of a state for purposes of KRS 304.24-390.

20 ➔Section 11. KRS 304.49-220 is amended to read as follows:

21 (1) Every captive insurer holding a certificate of authority under KRS 304.49-010 to
22 304.49-230 shall return to the Department of Revenue a statement under oath of all
23 premium receipts on business written by the captive insurer during the preceding
24 year and shall pay, on or before March 1 in each year, a tax at the rate of four-tenths
25 of one percent (0.4%) on the first twenty million dollars (\$20,000,000), and three-
26 tenths of one percent (0.3%) on the next twenty million dollars (\$20,000,000), and
27 two-tenths of one percent (0.2%) on the next twenty million dollars (\$20,000,000),

1 and seventy-five thousandths of one percent (0.075%) on each dollar thereafter on
2 the direct premiums collected or contracted for on policies or contracts of insurance
3 written by the captive insurer during the year ending December 31 next preceding,
4 after deducting from the direct premiums subject to the tax the amounts paid to
5 policyholders as return premiums, which shall include dividends on unabsorbed
6 premiums or premium deposits returned or credited to policyholders.

7 (2) Every captive insurer holding a certificate of authority under KRS 304.49-010 to
8 304.49-230 shall return to the Department of Revenue a statement under oath of all
9 assumed reinsurance premium receipts during the preceding year and shall pay, on
10 or before March 1 in each year, a tax at the rate of two hundred twenty-five
11 thousandths of one percent (0.225%) on the first twenty million dollars
12 (\$20,000,000) of assumed reinsurance premiums, and one hundred fifty thousandths
13 of one percent (0.150%) on the next twenty million dollars (\$20,000,000), and fifty
14 thousandths of one percent (0.050%) on the next twenty million dollars
15 (\$20,000,000), and twenty-five thousandths of one percent (0.025%) of each dollar
16 thereafter. However, no reinsurance tax applies to premiums for risks or portions of
17 risks which are subject to taxation on a direct basis pursuant to subsection (1) of this
18 section. No reinsurance premium tax shall be payable in connection with the receipt
19 of assets in exchange for the assumption of loss reserves and other liabilities of
20 another insurer or self-insurer under common ownership and control if the
21 transaction is part of a plan to discontinue the operations of the other insurer or self-
22 insurer, and if the intent of the parties to the transaction is to renew or maintain the
23 business with the captive insurer.

24 (3) If the aggregate taxes to be paid by a captive insurer calculated under subsections
25 (1) and (2) of this section amount to less than five thousand dollars (\$5,000) in any
26 year, the captive insurer shall pay a tax of five thousand dollars (\$5,000) for such
27 year.

- 1 (4) Two (2) or more captive insurance companies under common ownership and
2 control shall be taxed as though they were a single captive insurer.
- 3 (5) For the purposes of this section, common ownership and control shall mean:
- 4 (a) In the case of stock corporations, the direct or indirect ownership of eighty
5 percent (80%) or more of the outstanding voting stock of two (2) or more
6 corporations by the same shareholder or shareholders; and
- 7 (b) In the case of mutual corporations, the direct or indirect ownership of eighty
8 percent (80%) or more of the surplus and the voting power of two (2) or more
9 corporations by the same member or members.
- 10 (6) In the case of a branch captive insurer, the tax provided for in this section shall
11 apply only to the branch business of the company.
- 12 (7) The tax provided for in this section shall constitute all taxes collectible under the
13 laws of Kentucky from any captive insurer, and the taxes imposed under this section
14 shall be in lieu of all excise, license, occupational, or other taxes imposed by the
15 state, county, city, or other taxing district~~[except as provided in KRS 136.320(6)~~
16 ~~and (7)]~~.
- 17 (8) The Kentucky Department of Revenue shall annually, on or before June 30 of each
18 year, distribute ten percent (10%) of the premium tax revenues collected pursuant to
19 this section to the Office of Insurance for the regulation of captive insurance
20 companies under KRS 304.49-010 to 304.49-230.

21 → Section 12. KRS 304.49-222 is amended to read as follows:

- 22 (1) A captive insurer shall engage a manager who is approved by the executive
23 director~~[a resident of this state]~~.
- 24 (2) The captive manager shall maintain the books and records of the captive insurer's
25 business, transactions, and affairs at a location that is in this state or shall make
26 them available to the executive director at a location that is in this state.
- 27 (3) The captive manager shall promptly notify the executive director of any failure of

1 the captive insurer to comply with this section.

2 (4) The executive director may require a captive insurer to discharge a captive manager
3 for failure to substantively fulfill the captive manager's duties under this subtitle.

4 → Section 13. KRS 304.49-226 is amended to read as follows:

5 (1) If there is any ~~material~~ change in the **current operations or condition of a captive**
6 **insurer that materially impacts the** financial condition or management of ~~the~~^a
7 captive insurer, the captive insurer **or captive manager** shall notify the executive
8 director, in writing, within ten (10) business days of the change **or event**.

9 (2) No captive insurer shall voluntarily take any of the following material actions
10 without providing the executive director at least thirty (30) days' prior written notice
11 and receiving the executive director's approval of the action within the thirty (30)
12 day period:

13 (a) The dissolution of the captive insurer;

14 (b) Any sale, exchange, lease, mortgage, assignment, pledge, or other transfer of,
15 or granting of a security interest in, all or substantially all of the assets of the
16 captive insurer;

17 (c) Any incurrence of material indebtedness by the captive insurer;

18 (d) Any making of a material loan or other material extension of credit by the
19 captive insurer;

20 (e) Any payment or distribution that materially reduces capital and surplus;

21 (f) Any merger or consolidation to which the captive insurer is a constituent
22 party;

23 (g) Any conversion of the captive insurer to another business form;

24 (h) Any transfer to or domestication in any jurisdiction by the captive insurer; or

25 (i) Any material amendment of the organizational documents of the captive
26 insurer, **including changes in the officers, directors, owners, captive**
27 **manager, actuary, or auditor**.

1 **(3) A captive insurer may make loans to its parent company or affiliates; however, no**
2 **loans to a parent company or any affiliate shall be permitted without prior written**
3 **approval of the executive director and shall be evidenced by a note in a form**
4 **approved by the executive director. The loans shall be evaluated with regard to**
5 **creditworthiness and collateral.**

Greg D. Stumbo
Speaker-House of Representatives

Ray R. Wilkins
President of Senate

Attest: Jean E. Burgen
Chief Clerk of House of Representatives

Approved Arnold Schwarzenegger
Governor

Date April 8, 2010